

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KRISTI M SCHULER

Claimant

APPEAL NO. 11A-UI-13749-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILD ROSE CASINO & RESORT

Employer

OC: 09/25/11

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kristi Schuler, filed an appeal from a decision dated October 14, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 28, 2011. The claimant participated on her own behalf. The employer, Wild Rose Casino, participated by Human Resources Manager Audrey Niemann.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kristi Schuler was employed by Wild Rose from March 18, 2009 until September 29, 2011 as a part-time table games dealer. In March 2011 she was charged with felony third offense drunk driving and a serious misdemeanor assault on a police officer. She informed her supervisor of the charges.

On July 19, 2011, Ms. Schuler was convicted of both offenses but did not inform the Iowa Racing and Gaming Commission (IRGC) or anyone at Wild Rose. She maintained this was because she was on a leave of absence at the time to undergo treatment and her attorney had advised her not to report the convictions until she had finished treatment.

On September 28, 2011, the claimant contacted Human Resources Manager Audrey Niemann to ask for some additional time off to complete her treatment. During that phone conversation, she finally informed the employer she had been convicted of the felony and serious misdemeanor. The employer referred the matter to Tammy Hoffman, the on-site IRGC agent. Ms. Hoffman notified the claimant and Wild Rose Ms. Schuler's gaming license was being denied under the applicable provisions of Iowa law. The employer may not, under Iowa law, employ anyone who does not have a gaming license. Ms. Schuler was notified of her discharge by letter

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The claimant was well aware that she could not maintain a gaming license after being convicted of a felony and that Wild Rose could not continue to employ her without a gaming license. She withheld the information about her conviction for two months. The employer acted promptly once the information was provided because it could not legally continue to employ her after her license was denied.

Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. IDJS*, 299 N.W.2d 698 (Iowa 1980). The administrative law judge considers the reasoning in that case to be applicable here. While the offenses may have occurred on the claimant's own time, the result of her conduct rendered her unemployable because she could not retain a gaming license. The employer itself would be breaking the law to maintain her as an employee after her loss of license. The claimant is disqualified.

DECISION:

The representative's decision of October 14, 2011, reference 01, is affirmed. Kristi Schuler is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw